

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
BRIEF &  
APPENDIX**





76-1449

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

v.

CHARLES P. GREZO, JOSEPH D'AGOSTINO,  
SAMUEL EBARE and RICHARD MICHAEL BEACH,

Defendants-Appellants.

B  
PryS

ON APPEAL FROM THE UNITED  
STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF  
NEW YORK

BRIEF AND APPENDIX FOR APPELLANT D'AGOSTINO

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ISSUES PRESENTED

1. Whether the government's proof was insufficient to support the verdict that appellant participated in an illegal gambling business as one who conducted, financed, managed, supervised, directed or owned said business?
2. If the Court reverses the conviction against any of the appealing defendants by reason of insufficiency, should then the convictions against all appellants including Joseph D'Agostino, be reversed and the indictments dismissed?
3. Whether the government's proof was insufficient to support the verdict that appellant used a facility in interstate commerce in accordance with the intent of Sections 1952 and 5 of Title 18 United States Code as enacted by Congress?

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1.  
I  
STATEMENT.

The appellant Joseph D'Agostino was charged with five other individuals with violating the federal gambling statute Section 1955 of Title 18, United States Code, and with conspiracy to violate that section and use of telephone facilities in interstate commerce to disseminate sports line and betting information.

Named in the indictment as co-defendants were appellants Samuel Ebare, Charles B. Grezo, Richard M. Beach, Louis Camerano and Raymond Czerwinski, the latter not appealing. All defendants were charged with the substantive offense and conspiracy. The appellants D'Agostino, Grezo and defendant Camerano were also charged with violating Section 1952 of Title 18 by use of telephone facilities in interstate commerce to disseminate sport line and betting information.

After a jury trial of all defendants before Honorable Lloyd F. MacMahon, United States District Court Judge, serving by designation in the Northern District of New York, the appellants Ebare and D'Agostino and the defendant Czerwinski were convicted of the substantive and conspiracy counts. The appellants Beach and Grezo and the defendant Camerano were convicted on the sub-

stantive count but acquitted on the conspiracy count. D'Agostino and Camerano were also convicted on charges under Section 1952 of Title 18.

On September 17, 1976, D'Agostino was sentenced as follows:

- On Count 1 - Term of 6 mos. imprisonment & \$5,000 fine
- On Count 2 - Term of 6 mos. imprisonment - concurrent sentence
- On Count 3 - Term of 6 mos. imprisonment "
- On Count 4 - Acquitted
- On Count 5 - Term of 6 mos. imprisonment - concurrent sentence

#### STATEMENT OF FACTS

On the trial it was established that D'Agostino carried on a bookmaking operation by receiving over the telephone and booking bets on football and basketball games. This operation was clearly in violation of the gambling statutes of the State of New York. It was likewise established that it continued for a period in excess of thirty days and that, on occasion, at least, had a gross revenue in excess of \$2,000 in a single day. A large number of recorded telephone conversations received in evidence established that D'Agostino informed bettors as to the odds or the "line" and accepted and "booked" bets.



The government's theory and contention was that D'Agostino was the "manager" of the gambling operation and supervised its operation. No evidence produced at the trial indicated any betting transaction between D'Agostino and Ebare. The appellant D'Agostino contends that he was an independent bookmaker and that the evidence upon the trial failed to establish the government's contention and that the proof was insufficient to sustain either the substantive or the conspiracy count in the indictment. Likewise, the appellant contends proof of violation of the three counts of Section 1952 (3) of Title 18 was inadequate.

The trial evidence did establish the co-defendant Raymond Czerwinski procured business for D'Agostino and participated in conducting such business. Many recorded telephone conversations attested to that fact. Richard Beach, a friend of the appellant Ebare, was nebulously claimed to hold "a position of trust" in the D'Agostino gambling operation. It was claimed by one witness Beach had on a few occasions collected bets for D'Agostino and it further appeared Beach was given, on occasion, information concerning the status of the D'Agostino book.

The defendant Camerano was claimed to have supplied the "line" to D'Agostino from Las Vegas by telephone on January 4 and

January 6, 1975. These telephone calls were the basis of counts III, IV and V of the indictment. There was no claim Camerano participated in the D'Agostino operation in any other way.

The defendant Grezo, almost daily, by telephone, placed bets with D'Agostino. Grezo claimed to be a bettor and the specifics of his claim in this regard are fully set forth in his brief. The government claimed Grezo was a bookmaker and that some, at least, of his bets with D'Agostino constituted a "layoff" of bets accepted by Grezo to D'Agostino, another bookmaker. However, the government claims no exchange of layoff bets by both D'Agostino and Grezo which could be considered in the furtherance of the D'Agostino operation.

#### POINT I

#### THE GOVERNMENT'S PROOF WAS INADEQUATE TO ESTABLISH THE GUILT OF APPELLANT D'AGOSTINO

The government's proof failed to substantially establish any connection of Ebare's activity with the D'Agostino operation. The government's proof was limited to a showing that D'Agostino was operating a bookmaking operation in violation of New York State Law.

James Colloca, of Oswego, New York, who had himself been convicted in Oswego on state bookmaking charges and who testified



under a grant of immunity, stated that in mid-1974, following a business discussion with Ebare concerning a bicycle shop, Ebare informed him he could call D'Agostino at a telephone number in Syracuse if he desired to place bets. (Tr. 69-72, 97, 98, App. 10-13, 22,23). Colloca testified he, thereafter, phoned in to D'Agostino bets for himself and for some friends who also desired to bet (Tr. 73, App. p 14). The forwarding of these bets for his friends along with his own, according to Colloca, was a matter of accommodation for which he received no profit (Tr. 77, 87-89, 100, 101, App. 15, 17-19, 25, 26). Colloca testified D'Agostino would pay or collect these bets except on four or five occasions when Beach did so (Tr. 79, App. p. 16). Colloca admitted during the same period of time he also placed his own and his friends' bets with local bookmakers in Oswego, depending upon where the "line" was more advantageous (Tr. 90, 92, App. 20, 21). This type of activity, we submit, was merely that of a bettor and in the absence of profit in any fashion to him, does not constitute participation in any required manner in the D'Agostino operation.

There was no proof that Colloca ever accepted bets from D'Agostino or profited from the D'Agostino operation.

James D. Keller, a Syracuse used car dealer, testified in 1974-1975, he placed bets with Czerwinski (Tr. 155, 156, App.

p. 30, 31). During the football season, he lost \$1,600 on these bets and needed time to pay (Tr. 160, App. p 33). Keller told Czerwinski he wanted to talk to Ebare and later did so. In the conversation, Ebare asked why Keller wanted to talk to him and told Keller to discuss his problem with Czerwinski (Tr. 162, 239, App. pp. 34, 35). Telephone conversations between Czerwinski and D'Agostino on January 4 and 6, 1975 indicate those defendants regarded Keller's discussion of his losses with Ebare as an effort to have Ebare loan the money to pay Keller's losses. Keller never placed a bet with Ebare (Tr. 159, App. p 32).

Sam Visconti testified to conversations with Ebare concerning betting in 1972, long before the indictment period (Tr. 273, App. p. 36). His bets during 1974-1975 were with D'Agostino and he had no contact with Ebare (Tr. 277, App. p. 37). This testimony was not urged by the prosecution as any proof of connection of Ebare in the D'Agostino operation.

Leon Cook testified he permitted D'Agostino to use his residence telephone to receive bets in September and October, 1974. (Tr. 309, App. P. 39), but no testimony indicated that he profited from the D'Agostino book's use of his residence.



## POINT II

IN THE EVENT OF A REVERSAL OF THE CONVICTION OF ANY APPELLANT, THEN THE CONVICTIONS OF ALL APPELLANTS SHOULD BE REVERSED AND THE INDICTMENT DISMISSED.

The trial court submitted the issue of the number of persons involved in the D'Agostino operation to the jury on the government's contention that "all of the defendants now on trial plus James V. Colloca and Leon Cook, for a total of eight persons" were covered by the statutory requirement of five or more participants (Tr. 898, App. p. 58).

The position of Colloca has already been discussed as to his activities, with no profit to himself and as an accommodation to his friends, should not be considered as, in any manner, "conducting" the D'Agostino operation. His classification is clearly that of a bettor.

Leon Cook, the manager of a Syracuse restaurant, placed bets for himself with D'Agostino during the fall and winter of 1974-1975 (Tr. 308, App. p. 38), and gave D'Agostino's telephone number to some friends to enable them to also bet (Tr. 311, App. p. 40). This, again, as with Colloca, falls short of "conducting" the D'Agostino operation and is more accurately described as the activity of a bettor.

The government's proof was insufficient to establish that any five persons out of the eight, which the government contends were part of the illegal gambling operation, were engaged with the appellant D'Agostino in such a manner as to form the "five or more" as required by Statute. If the court were to categorize Colloca, Cook and Grezo as independent bookmakers who bet with the principal bookmaker, D'Agostino, then the government, in order to charge these defendants as part of the "five", in order to comply with the intent of the Statute, must offer proof of a distinction between an ordinary "bettor" and a "bookmaker bettor". If the above defendants were active unilaterally as "bookmaker bettors" with no other connection with D'Agostino, such as sharing in profits or losses, being designated certain areas of operation by D'Agostino or working together with D'Agostino in the preparation of "line information", then these three defendants would not come within the intended coverage of the Statute. The government's case was void of any such proof.

In United States v. Guzek, 527 F. 2d 552, the Court stated:

"As these four recent cases demonstrate, the mere placing of bets by one bookmaker with another or the mere furnishing of line information in and of itself



may not be sufficient to establish the interdependence of the bookmakers so as to fuse them into a single business for the purpose of counting each of these participants toward the five persons necessary to establish a violation of Section 1955.

The relationships between the bookmakers must be closely analyzed to ascertain whether they are truly independent or whether their relationships serve to weld them into a single gambling business \*\*\*. As we have noted in earlier cases, the existence of layoff betting, by which the profits of the gambling enterprise are shared and the risk of loss of each is reduced, is an important factor to be considered."

The activity of Camerano in furnishing line information on two dates is not sufficient to consider or to count him toward the necessary five persons. In United States v. Todaro, 550 F. 2d 1300 (Second Circuit - 1977), this Court characterized the activity of the defendant who supplied line information on nine or ten occasions to be "negligible" and "insignificant". This court held that "inadequate proof was offered that Todaro was one who conducts, finances, manages, supervises, directs, or owns" an illegal gambling operation.

If this court should determine the conviction of Grezo to be improper and that the acts of Camerano in furnishing "line" information on two dates under this Court's decision in United States v. Todaro, supra, are an insufficient connection to

warrant him to be counted as one of the necessary five individuals who violated the statute, then a situation exists which would require a reversal of the conviction of all appealing defendants. Under such circumstances, only D'Agostino and Czerwinski together with Beach and Ebare, if this Court concluded sufficient evidence on the trial connected them, would remain of the indicted defendants.

As pointed out above, Colloca and Cook did not participate in "conducting" the operation as required by statute.

The proof offered by the government restricts the illegal gambling activity to one which violated the laws of the State of New York and hence "local" in nature.

#### POINT III

THE GOVERNMENT'S PROOF OF APPELLANT D'AGOSTINO'S VIOLATION OF SECTION 1952 and 2 OF TITLE 18, UNITED STATES CODE AS CHARGED IN COUNTS III, IV AND V OF THE INDICTMENT WAS INSUFFICIENT TO COMPLY WITH THE INTENT OF THE STATUTE.

The government contended that the defendant Louis Camerano was the Las Vegas connection for the appellant's book-making operation in that on January 4, 1975, at 12:20 p.m.; on January 4, 1975 at 5:00 p.m. and January 5, 1975 at 12:30 p.m.,



telephone conversations between Camerano and the appellant resulted in "line information" which was unlawful since both Camerano and the appellant did perform and attempted to perform acts of promoting, managing, establishing, carrying on and facilitating the promotion, management, establishment and carrying on of an unlawful activity. U.S. v. Garramone, 506 F.2d 1050.

The statute involved with Counts III, IV and V of the indictment, when enacted by the Congress intended that certain elements must be proven before the statute is violated and a crime committed. The elements necessary to constitute a violation of the state by the appellant are (1) that Camerano and appellant used telephone facilities in interstate commerce, unlawfully and (2) that Camerano dispensed "gambling" information to the appellant and (3) with the knowledge that it would be used by the appellant in an illegal gambling operation and (4) that the appellant received the "gambling" information and (5) that the appellant actually utilized that information in his "gambling" operation.

It is contended that the government adequately offered proof, although weak, that on January 4, 1975 at 12:28 p.m. and 5:00 p.m. and on January 5, 1975 at 12:30 p.m. long distance

telephone conversations between Camerano and the appellant took place.

It can also be safely stated that Camerano dispensed to the appellant "gambling" information and that the appellant received the same.

A careful reading of the government's proof with respect to these counts indicates that no proof either expressly or by inference was offered to show that when Camerano made the telephone calls, Camerano knew that the information was going to be used in an illegal gambling activity. The government offered no proof that Camerano was aware of the appellant's business. In fact, Camerano had never been to Syracuse and we are referring to three "isolated" phone calls. U.S. v. Polizzi, 500 F. 2d 856.

The government failed to offer any evidence which would show that the information received by the appellant was utilized in his gambling operation.

With the extensive wiretap investigation conducted by the FBI during January 1975 of the appellant's operation, if that proof was obtained, it would have been offered. It would probably be safe to assume that there was no such proof.



In United States v. Todaro 550 F. 2d 1300 (Second Circuit - 1977), the defendant supplied line information on nine or ten occasions and this court held that the proof was insufficient to sustain a conviction under Section 1955 and 2 of Title 18 of the United States Code. It would then seem that the acts of Camerano who furnished the line on three occasions was insignificant and we could infer he had no knowledge as to appellant's operation.

Under the circumstances set forth herein, the government failed to sustain its burden of proof that Camerano was the appellant's Las Vegas connection.

#### CONCLUSION

It is respectfully submitted that the conviction of Joseph D'Agostino should be reversed, that the indictment should be dismissed and the sentence vacated.

Respectfully submitted,

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IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

Term

-VS-

No.

*joined*  
SAMUEL L. EBARE, *Paul Kordon*

also known as "Sam"

JOSEPH T. D'AGOSTINO, *Shank*

also known as "Joey"

RICHARD MICHAEL BEACH, *D. L. ...*

also known as "Harpo"

CHARLES P. GREZO, *Palmer*

also known as "Sonny"

LOUIS M. CAMERANO *Heck*

RAYMOND CZERWINSKI *Walter*

also known as "Baldy"

Vio. Title 18, U.S.C.,  
Sections 371, 1955, 1952 and 2

Filed:

COUNT I

The Grand Jury Charges:

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That continuously throughout the period between September 1, 1973 and June 26, 1975, the exact dates being to the Grand Jury unknown, in the Northern District of New York and elsewhere, James V. Colloca and Leon Cook, named herein as co-conspirators but not indicted as defendants, and numerous other persons whose exact identities are to the Grand Jury unknown, and SAMUEL L. EBARE, JOSEPH T. D'AGOSTINO, RICHARD MICHAEL BEACH, CHARLES P. GREZO, LOUIS M. CAMERANO, and RAYMOND CZERWINSKI, the defendants herein, did unlawfully and knowingly conspire, combine and agree together and with each other, to conduct, finance, manage, supervise, direct and own an illegal gambling business, that is, a sports bookmaking operation and parlay business which violated the provisions of Article 225 of the Penal Law of the State of New York and was therefore in violation of Sections 1955 and 2 of Title 18 of the United States Code:

A-1



Colloca, by the Government, and

And, during the period aforesaid, the said defendants committed, among others, the following overt acts in furtherance of the said conspiracy and in order to effectuate the object and purpose thereof:

(1) On or about October 30, 1974, SAMUEL L. EBARE and James V. Colloca met in The Chart Room, Oswego, New York, and had a discussion concerning a debt;

(2) On or about November 5, 1974, JOSEPH T. D'AGOSTINO spent approximately one and one-half hours at the residence of Leon Cook at 214 Gulf Road, Syracuse, New York, conducting the aforesaid illegal gambling business over Cook's telephone;

(3) On or about December 21, 1974, JOSEPH T. D'AGOSTINO had a telephone conversation with CHARLES P. GREZO about matters relating to the operation of the aforesaid illegal gambling business, and in which D'AGOSTINO accepted layoff wagers from GREZO;

(4) On or about January 3, 1975, JOSEPH T. D'AGOSTINO distributed line (or odds) information over the telephone to RAYMOND CZERWINSKI, and they discussed other matters relating to the operation of the aforesaid illegal gambling business;

(5) On or about January 4, 1975, RICHARD MICHAEL BEACH and JOSEPH T. D'AGOSTINO had a telephone conversation in which they discussed the status of the aforesaid illegal gambling business concerning a particular game, and during which D'AGOSTINO gave BEACH the line (or odds) information on numerous sporting events;

(6) On or about January 5, 1975, LOUIS M. CAMERANO telephoned JOSEPH T. D'AGOSTINO from Las Vegas, and CAMERANO gave D'AGOSTINO line (or odds) information on numerous sporting events

A<sub>2</sub>

(7) On or about January 6, 1975, JOSEPH T. D'AGOSTINO and SAMUEL L. EBARE had a telephone conversation in which SAMUEL L. EBARE gave JOSEPH T. D'AGOSTINO instructions with respect to the payoff of a winning bettor in the aforesaid illegal gambling business, and they arranged a meeting.

All of which was in violation of Section 371 of Title 18 of the United States Code.



COUNT II

The Grand Jury Further Charges:

X  
That, continuously from approximately September 1, 1973 through June 26, 1975, the exact dates to the Grand Jury being unknown, in the Northern District of New York and elsewhere, SAMUEL L. EBARE, JOSEPH T. D'AGOSTINO, RICHARD MICHAEL BEACH, CHARLES P. GREZO, LOUIS M. CAMERANO, and RAYMOND CHERWINSKI, the defendants herein, together with others who are both known and unknown to the Grand Jury, unlawfully did conduct, finance, manage, supervise, direct and own an illegal gambling business in the form of an unlawful sports bookmaking operation and parlay business which violated Article 225 of the Penal Law of the State of New York, and all of which was in violation of Sections 1955 and 2 of Title 18 of the United States Code.

COUNT III

The Grand Jury Further Charges:

That, on or about January 4, 1975, at approximately 12:28 p.m., in the Northern District of New York and elsewhere, JOSEPH T. D'AGOSTINO and LOUIS M. CAMERANO, the defendants herein, unlawfully did use and cause to be used a facility in interstate commerce, that is, telephone facilities between Mattydale, New York and Las Vegas, Nevada, to disseminate sports line and betting odds information with the intent to promote, manage, establish,

carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity -- namely, a business enterprise involving gambling upon sporting events in violation of Article 225 of the Penal Law of the State of New York and Section 1955 of Title 18, United States Code; and thereafter the said defendants did perform and attempt to perform acts of promoting, managing, establishing, carrying on, and facilitating the promotion, management, establishment and carrying on of the aforesaid unlawful activity, all in violation of Sections 1952 and 2 of Title 18, United States Code.

And, further, in the Northern District of New York, the defendant herein, CHARLES P. GREZO, unlawfully did aid, abet, induce, procure and cause the said JOSEPH T. D'AGOSTINO to commit the said offense at the aforesaid time and date, all of which was in violation of Sections 1952 and 2 of Title 18 of the United States Code.



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COUNT IV

The Grand Jury Further Charges:

That, on or about January 4, 1975, at approximately 5:00 p.m., in the Northern District of New York and elsewhere, JOSEPH T. D'AGOSTINO and LOUIS M. CAMERANO, the defendants herein, unlawfully did use and cause to be used a facility in interstate commerce, that is, telephone facilities between Mattydale, New York and Las Vegas, Nevada, to disseminate sports line and betting odds information with the intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity -- namely, a business enterprise involving gambling upon sports events in violation of Article 225 of the Penal Law of the State of New York and Section 1955 of Title 18, United States Code; and thereafter the said defendants did perform

A-6

and attempt to perform acts of promoting, managing, establishing, carrying on, and facilitating the promotion, management, establishment and carrying on of the aforesaid unlawful activity; all in violation of Sections 1952 and 2 of Title 18, United States Code.

And, further, in the Northern District of New York, the defendant herein, CHARLES P. GREZO, unlawfully did aid, abet, induce and procure and cause the said JOSEPH T. D'AGOSTINO to commit the said offense at the aforesaid time and date, all of which was in violation of Sections 1952 and 2 of Title 18 of the United States Code.



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The Grand Jury Further Charges:

That, on or about January 5, 1975, at approximately 12:30 p.m., in the Northern District of New York and elsewhere, JOSEPH T. D'AGOSTINO and LOUIS M. CAMERANO, the defendants herein, unlawfully did use and cause to be used a facility in interstate commerce, that is, telephone facilities, between Mattydale, New York and Las Vegas, Nevada, to disseminate sports line and betting odds information with the intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity -- namely, a business enterprise involving gambling upon sporting events in violation of Article 225 of the Penal Law of the State of New York and Section 1955 of Title 18, United States Code; and thereafter the said defendants did perform and attempt to perform acts of promoting, managing, establishing, carrying on, and facilitating the promotion, management, establishment and carrying on of the aforesaid unlawful activity; all in violation of Sections 1952 and 2 of Title 18, United States Code.

And, further, in the Northern District of New York, the defendant herein, CHARLES P. GREZO, unlawfully did aid, abet, induce,

procure and cause the said JOSEPH T. D'ACOSTINO to commit the said offense at the aforesaid time and date, all of which was in violation of Sections 1952 and 2 of Title 18 of the United States Code.

---

JAMES H. SULLIVAN, JR.  
UNITED STATES ATTORNEY  
NORTHERN DISTRICT OF NEW YORK

A TRUE BILL:

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FOREMAN



1 conversation?

2 A Well, my original was that he was -- he asked me if he  
3 could find a place so that he can open a bicycle shop.

4 Q Well, what was the nature --

5 A That was the original.

6 Q All right. And then did he say anything to you about  
7 taking action?

8 A Not right then and there.

9 THE COURT: I object to the form  
10 of that. If the Court please.

11 THE COURT: Don't lead, please.

12 BY MR. FISHER:

13 Q Did he tell you anything else during that conversation?

14 A No, that was the only conversation at the time.

15 Q And was there another conversation you had with Mr. Ebare?

16 A Later.

17 Q All right. And where was that?

18 A I would say that was at my store.

19 MR. SHAWHAN: Pardon me?

20 THE COURT: At his store.

21 Q And approximately when was that?

22 A Oh, a few weeks later.

23 Q And what did Mr. Ebare tell you during that conversation?

24 A Well, if I had any action that -- action, why he can get  
25 it in for me.

A-11

1 THE COURT: If you have any action,  
2 he would get it in for you, is that what he said?

3 THE WITNESS: Yes.

4 THE COURT: All right.

5 BY MR. FISHER:

6 Q Now, did you know what he meant by the word action?

7 A Well, baseball action.

8 Q And what does action mean, according to what you under-  
9 stood?

10 A Well, being betting action.

11 Q Betting. And did he give you any more information about  
12 how your arrangement would be?

13 A Well, just that I could call, and he would put it in.

14 Q Are you saying he gave you the phone number to call?

15 MR. SPANGLER: Wait a minute, I object  
16 to that.

17 THE COURT: Yes. Take his answer as  
18 it was. Next question.

19 BY MR. FISHER:

20 Q Now, did there come a time when Mr. Ebare introduced  
21 you to Mr. D'Agostino?

22 A Yes.

23 Q And what did he say at that time?

24 A Mr. D'Agostino, primarily, he was -- he wanted me to rent  
25 an automobile for him.



A-12

1 Q Did you have any discussions about betting?

2 A Not with D'Agostino at the time, no.

3 Q Did you have any such conversations at another time with  
4 Mr. Ebare and D'Agostino?

5 A Well, it was just through a phone call, once in awhile.

6 Q Mr. Colloca, did you have an opportunity to testify before  
7 the grand jury on June 5th, 1975?

8 A Yes.

9 Q And I'm referring to Exhibits 3523 and 23, page 53.

10 Mr. Colloca, I would ask you to read the grand jury  
11 testimony, starting about midway down the page and onto  
12 page 54 and ask you if that refreshes your recollection.

13 A Yes, it's true.

14 Q What is true, Mr. Colloca?

15 A That I took football action, too, at the time.

16 Q The question is, did Mr. Ebare --

17 THE CLERK: I'm sorry to interrupt,  
18 but I just can't hear the answer. Would you read back  
19 that last one?

20 A Then in two weeks of football.

21 BY MR. FISHER:

22 Q Mr. Colloca, does that refresh your recollection as to  
23 whether Mr. Ebare introduced you to Mr. D'Agostino?

24 A Yes.

25 Q It does refresh your recollection?

1 A Now it does refresh my recollection.

2 Q And did Mr. Ebare introduce you to Mr. D'Argentino?

3 A Yes.

4 Q All right. And what did Mr. Ebare say about him at the  
5 time he introduced you?

6 A That he would call me, he would call me occasionally.

7 Q That he would call --

8 MR. FISHER: The answer is that he would  
9 call him occasionally.

10 Q For what purpose, did he say?

11 A For betting.

12 MR. FISHER: For betting is the answer.

13 Q Now, subsequent to that discussion, did you begin calling  
14 the telephone number that Mr. Ebare gave you?

15 A I would call --

16 MR. SHANAHAN: I object to that, that  
17 Mr. Ebare gave it to him. I don't understand that as  
18 the testimony.

19 MR. FISHER: I believe the testimony was,  
20 Mr. Ebare first gave him the number.

21 THE COURT: Did you begin calling  
22 whatever number it is?

23 BY MR. FISHER:

24 Q Did you begin calling the number?

25 A Yes.



1 Q And were these wagers which you took from other people,  
2 you accepted from customers of yours?

3 A That would be friends of mine, friends of mine, as far  
4 as that is concerned.

5 Q And would the person at the other end of the number accept  
6 those wagers?

7 A Yes.

8 Q Now, did you ever receive the line information?

9 A Yes.

10 Q And who did you receive the line information from?

11 A I received it from most anybody. The line would be given  
12 to me from somebody.

13 Q Did somebody call?

14 A Somebody called.

15 Q Or did sometimes they come by?

16 A No, they wouldn't come by, they would call.

17 Q Was it the same person who called to give you the line  
18 that you called back the bets to?

19 A No.

20 Q It could be a different person?

21 A Yes.

22 Q But was it at the same number?

23 A It would be the same --

24 MR. SHANAHAN: I object to that question.

25 THE COURT: Overruled. Was it the same

1 Q Was it usually the case that they put the money up or they  
2 did not put the money up?

3 A Usually the case that they did not put the money up.

4 Q In other words, their credit was accepted and you settled  
5 at the end of a period of time?

6 A By me.

7 Q By you, and you were responsible for settling up?

8 A I was responsible.

9 Q Now, did you make any profit from this settling up?

10 A No, I made no profit.

11 Q All right. What did you do with the money that you  
12 collected from settling up?

13 A I would turn it over to whoever come to collect it.

14 Q All right. Would somebody come personally to collect it?

15 A Yes.

16 Q All right. And who would come to collect it?

17 A Well, they would say that somebody is coming down to  
18 collect it, and it wouldn't be any particular one person.

19 THE COURT: Who would say that they are  
20 coming down to collect it?

21 THE WITNESS: Well, they would tell me  
22 on the telephone.

23 THE COURT: Did you recognize the voice  
24 on the phone?

25 THE WITNESS: Sometimes I -- as far as



A-16

1 phone they would be there at a certain time.

2 THE COURT: And that person would come?

3 THE WITNESS: That person would come,  
4 or they would tell me to be at a certain place and --

5 THE COURT: But you don't know who called  
6 you?

7 THE WITNESS: For sure, I didn't know  
8 for sure.

9 THE COURT: Well, what is your best  
10 recollection of who called you?

11 THE WITNESS: Well, I would say my  
12 best recollection would be Joey.

13 THE COURT: Joey D'Agostino?

14 THE WITNESS: Joey, my best recollection.

15 THE COURT: All right, go ahead.

16 BY MR. FISLER:

17 Q Mr. Colloca, did the defendant, Michael Beach, ever come  
18 around to collect?

19 A Yes.

20 MR. WINDSTRAIT: Your Honor, I object.

21 THE COURT: Overruled, under the  
22 circumstances. Go ahead.

23 A Yes.

24 Q Approximately how often did he come around to collect?

25 A Oh, maybe about five, four, five, six times.

## CROSS-EXAMINATION

BY MR. SHANAHAN:

Q Mr. Colloca, would you please try to keep your voice up so that I can hear you back here.

A Yes.

Q Now, you tell us that you are in the dry cleaning business?

A Yes.

Q And you were during the years of 1974 and 1975?

A Yes, I was.

Q How long have you been in that business?

A I would say 30 years.

Q 30 years?

A 30 years.

Q And you had a place of business, a store, or a shop where you received dry cleaning and where you did the cleaning work?

A Yes.

Q Is that in the downtown area of Oswego?

A The downtown area in Oswego, right.

Q And has that been your location for quite some period of time?

A Yes.

Q All right. Now, you say that, if I understood you correctly, that during the years of 1974 and 1975 you took bets?



- 1 A Yes.
- 2 Q Is that right?
- 3 A Yes.
- 4 Q And do I understand correctly that you say you took these
- 5 bets from your friends?
- 6 A That's right.
- 7 Q And these were people then that you knew?
- 8 A Right.
- 9 Q In the city of Chicago, would that be right?
- 10 A Right.
- 11 Q Well, now, let me ask you: did those people come to you
- 12 and ask you to bet their money for them, is that what you
- 13 meant?
- 14 A That is what they did.
- 15 Q And did you bet, yourself?
- 16 A I bet, myself.
- 17 Q Well, it is important for us to understand precisely how
- 18 this happened now. Am I to understand that people that
- 19 you knew would come to you and they would tell you they
- 20 wanted to bet on some sporting event?
- 21 A Right.
- 22 Q And that they asked you to place their bets for them?
- 23 A Right.
- 24 Q Is that what happened?
- 25 A Yes.

1 Q So that you would take the bets that they gave you, and  
2 with your own money, you would place these bets?

3 A Right.

4 Q Is that what you are telling us that happened?

5 A That is the way it happened.

6 Q You are sure about that?

7 A Yes, this is the way it happened.

8 Q Now, did you charge these friends of yours any money to  
9 place their bets as you are telling us?

10 A I didn't charge them myself, no.

11 Q You didn't charge them any money for betting?

12 A Not for me, no.

13 Q All right. Now, there was a time, was there not, Mr.  
14 Colloca, when there was a wiretap on your telephone in  
15 your place of business in Gowero?

16 A Right.

17 Q Is that right?

18 A Right.

19 Q And when was that, if you can tell us?

20 A I don't remember exactly what days they were.

21 Q Well, was it in the latter part of 1974, early '75?

22 A I would say the latter part of '74.

23 Q Latter part of '74. And was that a New York State police  
24 wiretap?

25 A That was a Federal -- I had a Federal tap and I had a



Colloca, by the Government, cross

1 New York State police tap, also.

2 Q Well, are you telling us that there was a Federal tap  
3 and also a New York State police tap?

4 A Yes.

5 Q You mean at separate times?

6 A Two separate times, or they could have been the same time.

7 Q I beg your pardon?

8 THE COURT: Either, he said.

9 A I said it could have been at separate times or it could  
10 have been at the same time. I don't know exactly, I  
11 don't remember exactly.

12 Q I see, all right. Now, let me ask you, when friends of  
13 yours would come and tell you they wanted to bet, as you  
14 have described to me, did you bet with bookmakers up in  
15 Oswego?

16 A Yes, I did.

17 Q And with how many bookmakers did you bet in Oswego?

18 A Two.

19 Q Two. And who were they, please?

20 A Do I have to answer this?

21 Q I'm afraid you will have to tell us, unless the Court  
22 excuses you from doing it.

23 THE COURT: Tell him.

24 A Well, I bet with John Spaino.

25 Q And who else?

1 who were engaged in gambling in Oswego, correct?

2 A Well, they were engaged, yes.

3 Q In one form or another?

4 A In one form or another.

5 Q All right. Now, when was it that you were placing bets

6 with Mr. and Mrs. Spaino?

7 A It was during the same time.

8 Q During the same time period that you have testified about  
9 here?

10 A Right.

11 Q Well, do I understand then that some friend of yours or  
12 friends of yours came and wanted you to bet, that you  
13 would maybe decide to place that bet with Spaino or  
14 maybe you would decide to place it with D'Agostino?

15 A Wherever the line was the best.

16 Q Well, all right. Now, let me ask you: in connection  
17 with betting with Spaino, did you get a line from them?

18 A Yes.

19 Q And that would be the point spread?

20 A That would be the point spread, right.

21 Q Between the two different teams that were in come contact,  
22 would that be right?

23 A Right.

24 Q And do I understand that on the telephone from D'Agostino,  
25 you also got a line spread?



1 the subject of his opening a bicycle shop?

2 A Right.

3 Q Would that be so?

4 A Right.

5 Q And he wanted you to look for some location in the City  
6 of Oswego where he could open a shop?

7 A Right.

8 Q And did you in fact go and interview some owner of a  
9 building where a bicycle shop had been in operation at an  
10 earlier date?

11 A Right.

12 Q And that was with a view of attempting to rent that shop  
13 for Ebare, was it?

14 MR. FISHER: Objection, irrelevant.

15 THE COURT: Overruled.

16 A Yes.

17 BY MR. SPANAHAN:

18 Q Now, I think you said that after that business about the  
19 bicycle shop, there came a time when you and Ebare had  
20 a talk in your store?

21 A Right.

22 Q And at that time, the talk was where you could place bets?

23 A Right.

24 Q And that he indicated that he would try to get bets in  
25 for you, if you wanted to bet?

1 A Right.

2 Q With somebody else, is that right?

3 A Right, with somebody, he could get the bets in for me.

4 Q And you say that following that, on some occasion he  
5 introduced you to Joey D'Agostino?

6 A Yes.

7 Q Had you ever known D'Agostino before that time?

8 A No, no.

9 Q Now, did D'Agostino ever pay you any money for getting  
10 bets for him?

11 A D'Agostino didn't pay me any money.

12 Q Did Moore ever pay you any money?

13 A Moore never paid me no money.

14 Q And you say your customers didn't pay you?

15 A My customers did pay, yes.

16 Q I beg your pardon?

17 A My customers did pay.

18 Q I don't know what you're saying, did or did not.

19 A They did pay, if they lost, yes.

20 Q If they lost, they paid?

21 A And if they won, they got paid.

22 Q But what I am getting at is, they didn't pay you any  
23 profit over and above their loss?

24 A No.

25 Q Now, in the course of time, as I understand it, you called



1 some telephone number that you had been furnished?

2 A Right.

3 Q Was that a Syracuse telephone number?

4 A Well, it would be in the Syracuse area.

5 Q Did you know the location of the telephone you were calling?

6 A No, I did not.

7 Q When you would call, did you know with whom you talked?

8 A I talked to different ones.

9 Q I didn't catch that.

10 A I talked to different people.

11 Q You talked to different people?

12 A Sometimes I would talk to --

13 Q All right. And as I understand it, on an occasion, you  
14 would get the line?

15 A I would get the line.

16 Q And then later you might call and indicate what the bets  
17 were?

18 A Right.

19 Q Did you ever accept any bets back from this telephone that  
20 you called?

21 A No, no, I never --

22 Q Let me ask you: do you know what the term laying off bets  
23 means?

24 A Yes.

25 Q Now, do you agree with me that if a person is a bookmaker

- 1 and he accepts bets, that he may lay off part of that  
2 action with somebody else?
- 3 A Yes.
- 4 Q Is that what you understand that lay off is?
- 5 A I understand the lay off, yes.
- 6 Q You understand the term?
- 7 A Yes.
- 8 Q Now, as you have described it, do you say that you were  
9 laying off bets with this telephone number?
- 10 A Well, I just put the bets in.
- 11 Q I beg your pardon?
- 12 A I put the bets in.
- 13 Q You put the bets in?
- 14 A As they --
- 15 Q But these bets that you put in, did you book them yourself  
16 in the first instance?
- 17 A I put them in. I put the bets in for myself as well as  
18 friends of mine.
- 19 Q I understand what you are telling me, but when these  
20 friends of yours would come to you and they wanted to bet,  
21 say, on a super bowl game, just as an illustration --  
22 Right.
- 23 Q -- they wanted to bet on Miami --
- 24 A Right.
- 25 Q -- would you book that bet yourself?



- 1 A I wouldn't say I would book it myself.
- 2 Q What you would do is call it in, whatever you wanted to
- 3 bet?
- 4 A That's right.
- 5 Q Would that be right?
- 6 A Right.
- 7 Q And that is the only way you ever did it, is that what
- 8 you mean?
- 9 A That is the way I did it.
- 10 Q Did you ever get line information from any place other
- 11 than this telephone in the Syracuse area and other than
- 12 Spaino?
- 13 A I got a line from -- I got a line from the Spainos, and
- 14 I got a line from this, from the Syracuse area, and that's
- 15 all.
- 16 Q You never got any other line?
- 17 A No.
- 18 Q Did you ever use any newspapers or --
- 19 A I used newspapers to guide myself.
- 20 Q And did these newspapers contain a line?
- 21 A Right, and I also used -- I also used tip sheets, as they
- 22 call it.
- 23 Q Subscriptions?
- 24 A Tip sheets.
- 25 Q Sporting magazines?

1 A I would say '74.

2 Q Now, on that occasion, when you say that you saw Ebare at  
3 that location, what part of the building did you see him  
4 in? Was this the bar or at a table in the restaurant, or  
5 what?

6 A The bar.

7 Q Was there anyone else present there at that time?

8 A There was a person present there at that time, but I  
9 don't know who it was, and I don't remember who it was.

10 Q How long a period of time were you and Ebare together on  
11 that occasion?

12 A Oh, we were there, we were together maybe about an hour,  
13 between an hour and two hours.

14 Q And were both of you --

15 A We had a few drinks there.

16 Q You were both drinking at the bar during that period of  
17 time were you?

18 A Right.

19 Q And had you, on other occasions, been in restaurants and  
20 in bars with Ebare in the past?

21 A Yes, I met him in the Pussycat, too.

22 Q No, I'm talking about before this Chart Room.

23 A No.

24 Q That was the first time you ever met him at a bar or a  
25 restaurant?



1 A At a restaurant, yes.

2 Q You testified before the grand jury in this case, did you  
3 not?

4 A Yes, I did.

5 Q Well, didn't you give some testimony that had to do with  
6 you didn't want Ebare to be picking up the check, so you  
7 gave him some money?

8 A I also did that, too.

9 Q Well, when was that, before this Chart Room or after, or  
10 what?

11 A That was on another occasion. I also -- insisted that  
12 I would pay the check.

13 Q All I am trying to find out is, were you in some restaurant  
14 or some bar with him on some occasion before this Chart  
15 Room?

16 A Yes, yes.

17 Q So this Chart Room wasn't the only time you ever met him  
18 in a restaurant?

19 A That's right.

20 Q And it wasn't the only time you ever had a drink with him?

21 A That's right.

22 Q And were you and Ebare on friendly terms?

23 A Yes, we were.

24 Q Now, did I understand you to say at some point in your  
25 direct examination, I'm not sure I heard it correctly,

- 1 but did I understand you to say that you paid him \$1200  
2 at some time?
- 3 A No, I paid him 600.
- 4 Q You said what?
- 5 A I paid him \$600.
- 6 Q You paid him \$600?
- 7 A That's all I paid.
- 8 Q What was this talk about \$1200? I couldn't hear what  
9 were saying.
- 10 A Well, this is what I owed.
- 11 Q I beg your pardon?
- 12 A That is what I owed.
- 13 Q That is what you owed?
- 14 A Yes.
- 15 Q And what you are talking about now is what you owed for  
16 bets for friends?
- 17 A That's right.
- 18 Q Well, did you owe it or did the friends owe it?
- 19 A Well, a combination.
- 20 Q A combination?
- 21 A A combination.
- 22 Q Now, in connection with your appearing as a witness before  
23 the grand jury, you did appear back last summer, the  
24 summer of '74, did you not, before the grand jury in this  
25 case?



Keller, by the Government, direct

1 Q Could you point him out for us, please?

2 A The man on the end over there.

3 THE COURT: Let the record reflect he  
4 has identified the defendant.

5 Q And are you acquainted with the defendant, Raymond  
6 Czerwinski?

7 A Yes.

8 Q And do you see him in the courtroom today?

9 A Yes, next to Sam.

10 Q The gentleman --

11 THE COURT: Which one, from the left or  
12 right?

13 THE WITNESS: Second man from the left,  
14 right, standing.

15 THE COURT: Let the record reflect he  
16 has identified the witness. Proceed.

17 Q Now, during 1974-1975, did you place bets on the outcome  
18 of sporting events with anybody?

19 A Yes, I did.

20 Q And who did you place bets with?

21 A Ray -- how do you pronounce it, Czerwinski?

22 Q Czerwinski?

23 A Czerwinski.

24 Q Do you address Mr. Czerwinski by nickname?

25 Baldy.

Keller, by the Government, direct

1 Q To your knowledge, do others address him by the nickname  
2 Baldy?

3 A I believe so.

4 Q And during this betting period, approximately how much  
5 did you bet on a weekly basis with Mr. Czerwinski, or  
6 give us a range, if you can.

7 A I have been trying to search that over in my mind. Maybe  
8 a couple hundred, 300, sometimes.

9 Q Per week or per bet?

10 A I'm not really positive on the amounts that I bet.

11 Q All right. And were these bets on what, football games?

12 A Yes, sir.

13 Q And basketball?

14 A No.

15 Q And did you use a line information, did you use a line to  
16 place these bets?

17 A By line, you mean a point per team?

18 Q Point spread, yes?

19 A Yes.

20 Q And where did you get the point spread?

21 A I believe I get them from Baldy.

22 THE COURT: I'm sorry, I couldn't hear  
23 the answer.

24 MR. FISHER: He said, I believe I got  
25 it from Baldy. Baldy, referring to Mr. Czerwinski.



1 A Okay.

2 Q Mr. Keller, was there a surcharge or an extra amount of  
3 money paid on losing bets by you to Mr. Czerwinski?

4 A You mean was there interest charged or was there --

5 Q I will give you an example. If you made a \$100 bet with  
6 Mr. Czerwinski -- first of all, would you put the money  
7 up front or would he take your credit?

8 A If I put the money up front, it would cost me \$110 to  
9 win \$100.

10 Q In other words, what if you lost that \$100 bet, how much  
11 would you have to pay?

12 A \$110.

13 Q And if you won that \$100 bet, how much would you collect?

14 A \$100.

15 Q Now, did you ever place any bets with the Defendant Ebare?

16 A No.

17 Q By the way, were you acquainted with the defendant,  
18 Michael Beach, Richard Michael Beach?

19 A Yes.

20 Q Do you see him in the courtroom?

21 A Yes.

22 Q Would you point him out to us, please?

23 A Third from the left.

24 THE COURT: Let the record reflect he has  
25 identified Mr. Beach.

1 Q Now, during the fall, football season, 1974-75, did you  
2 lose a quantity of money on betting?

3 A Yes, I did.

4 Q Approximately how much did you lose?

5 A Approximately \$1600.

6 Q And were you able to pay the \$1600?

7 A No.

8 Q Now, what did you do about this debt?

9 A I tried to make arrangements to pay it over a period of  
10 time.

11 Q Did you ask Mr. Czerwinski that you wanted to discuss the  
12 matter with the Defendant Ebare?

13 MR. PAPPAS: Objection.

14 MR. SHANAHAN: Objection.

15 THE COURT: Sustained.

16 BY MR. FISHER:

17 Q Mr. Keller, did you ever have a discussion with the  
18 Defendant Czerwinski about the \$1600 bet?

19 A Yes, I did.

20 Q And what did you say?

21 A I said it would be difficult for me to pay it at that time  
22 and I would like to pay it over a period of time.

23 Q And what did he say, do you recall?

24 A No.

25 Q Did you say anything else to Mr. Czerwinski at that time?



Keller, by the Government, direct

1 Q And approximately when was that?

2 A January '75, I believe it was.

3 Q Do you recall where?

4 A Yes, my car lot.

5 Q And was anybody else present besides you and Mr. Ebare  
6 at this discussion?

7 A Mike Beach.

8 Q Now, could you tell us what you said to Mr. Ebare during  
9 this discussion?

10 A I said that I had made some bets with Baldy and I would  
11 like to make arrangements to pay them over a period of  
12 time.

13 Q What did Mr. Ebare say?

14 A Something to the reply of, why did you call me here?

15 Q And what did you say?

16 A I thought that he was the man to talk to.

17 Q What did he say?

18 A I think he told me to take it up with Baldy.

19 Q I am going to show you the bottom of page 16 and the  
20 top of page 17 of your testimony, and see if that  
21 refreshes your recollection.

22 A Right, okay, this part.

23 Q Okay, let me ask, does that refresh your recollection?

24 A This here down here, this is what you want me to read?

25 Q And the top of page 17.

1           that you told Ebare at that time that you made some bets  
2           with Baldy and that you would like to pay them over a  
3           period of time.  
4    A       That's true.  
5    Q       Would that be true?  
6    A       Yes.  
7    Q       And you tell us that previous to that time you had talked  
8           to Czerwinski or Baldy, he said to you, that would be  
9           all right, correct?  
10   A       I am not positive that it was previous to that or not.  
11   Q       Well, I understood you to say just a minute ago that you  
12           talked to Czerwinski, told him you wanted some time  
13           because of your poor season, poor business season?  
14   A       Yes, I did.  
15   Q       And that he said it would be all right?  
16   A       Yes.  
17   Q       That is so, is it, all right. Now, I think that you  
18           told us yesterday that Ebare then said to you, well, why  
19           are you calling me, or why are you talking to me, is  
20           that right?  
21   A       He told me to see Baldy.  
22   Q       And he told you to see Czerwinski, would that be so?  
23   A       Yes.  
24   Q       And that was the substance of that conversation, was it?  
25   A       Approximately, yes.



Vincenti, by the Government, cross

- 1 Q Three years. So that you would have become acquainted  
2 with Mr. Ebare then in the year of 1972, would that be  
3 right?
- 4 A Approximately.
- 5 Q All right. And you have indicated that in the fall of  
6 1974 and early winter of '75, the football season of that  
7 year, you were betting, would that be right?
- 8 A Yes.
- 9 Q All right. And how long before that had you been betting?
- 10 A With Mr. Ebare?
- 11 Q How long had you been betting, first of all?
- 12 A How long? A long time, years.
- 13 Q A matter of years?
- 14 A Yes, sir.
- 15 Q Had you first bet with Ebare in 1972?
- 16 A Approximately, yes.
- 17 Q And when you testified before the grand jury as to how  
18 you started betting and your talk with Ebare, was that  
19 something, as a matter of fact, that happened back in  
20 the year of 1972 that you were telling about?
- 21 A Yes.
- 22 Q All right. Now, when you were betting in 1974 and '75,  
23 because that is what we are interested in here, were you  
24 making your bets on the telephone?
- 25 A Yes.

Visconti, by the Government, cross

1 Q And are those answers correct?

2 A Yes.

3 Q Now, you have indicated to us previously that you testified  
4 before the grand jury in May or June of 1975, and do you  
5 recall now when it was that you had last seen Sam Ebare  
6 before you testified before the grand jury?

7 A When I saw him?

8 Q When you would see him last before that.

9 A No, I don't recall.

10 Q Do you recall testifying before the grand jury that the  
11 last time you saw him was in a bowling alley, maybe last  
12 winter, do you recall exactly?

13 A That could be correct. I don't remember, I don't have it  
14 written down.

15 Q And do you recall saying that you had not talked to Ebare  
16 on the telephone for a year?

17 A Yes.

18 Q Or for a long time?

19 A Yes.

20 Q And that the person that you had talked to on the telephone  
21 was Joe D'Agostino?

22 A Yes.

23 Q And when you were before the grand jury, were you asked if  
24 Sam Ebare stopped at your store, your grocery store?

25 A He used to shop there occasionally, yes.



Cook, by the Government, direct

1 Q On the far right?

2 A On my far right, yes.

3 MR. FISHER: Let the record reflect the  
4 Defendant D'Agostino has been identified.

5 THE COURT: Yes.

6 Q Are you acquainted with the Defendant Samuel Ebare?

7 A Yes.

8 Q Is he in this courtroom?

9 A Yes.

10 Q Could you point him out to us, please?

11 A Against the wall.

12 Q Which one?

13 A In the blue suit, blue tie.

14 MR. FISHER: Let the record reflect --

15 THE COURT: Yes.

16 Q During the Fall of 1974, going on into the winter of 1975,  
17 did you have any kind of arrangement with the Defendant  
18 D'Agostino with respect to betting?

19 A Yes.

20 Q What was your arrangement?

21 A That I bet him.

22 Q How did you bet?

23 A Some was in person and some was over the telephone.

24 Q How did you get the telephone number to call?

25 A It was my own telephone.

1 Q How did you know the number to call? Was the Defendant  
2 D'Agostino on your telephone?

3 A Yes, he was.

4 Q For a period of time?

5 A Yes.

6 Q When was this?

7 A That fall, September or October.

8 Q Of 1974?

9 A Yes, sir.

10 Q And during what hours would he use your telephone?

11 A At night. I am not sure because I go to work at 4 or  
12 5 o'clock in the afternoon. He was there during the day,  
13 usually at 12, 1 o'clock.

14 Q And did he ever tell you what he was using the telephone  
15 for?

16 A Well, I found out what it was, yes.

17 Q How did you find out?

18 A I overheard the --

19 MR. SARAHAN: Objection to how he found  
20 out.

21 THE COURT: Sustained.

22 BY MR. FISHER:

23 Q Did you overhear any conversations of the Defendant  
24 D'Agostino while he was using the telephone?

25 A Yes.



1 A A few times I did, yes.

2 Q Did you hear --

3 A I didn't hear what they said, no. I heard what he said.

4 Q Well, what else did he say besides what you just told us  
5 -- withdrawn.

6 Q Did he have papers or records or things  
7 around him that he was writing on?

8 A Yes.

9 Q Now, did you know some of the bettors that were dealing  
10 with the defendant D'Agostino?

11 A Some were my friends, yes.

12 Q And did you give any of these bettors your telephone  
13 number?

14 A Yes.

15 Q For what purpose?

16 A To place a bet.

17 Q With who?

18 A With Joe.

19 Q And did you ever give any of these bettors any line  
20 information?

21 A If someone asked me, you know, I, myself, that such and  
22 such a game was such and such a point spread, you know,  
23 nothing regular.

24 Q To your knowledge, did any of these bettors ever meet  
25 personally with Joe?

1 very important for the people of the community.

2 Please don't make the mistake and please don't be  
3 deceived. Don't be confused. Don't go back and, in  
4 a cloud of confusion, be diverted from the truth and  
5 just say, "well, I am confused and we will find them  
6 not guilty."

7 Follow the Judge's instructions and  
8 listen carefully. Use your knowledge of the evidence  
9 and use your plain common sense to put it together.

10 It is submitted that when you do, you  
11 will return a verdict of guilty.

12 Thank you very much.

13 The Court: Ladies and gentlemen of the  
14 jury: It now becomes my function at this stage of the  
15 trial to instruct you on the law that governs your  
16 decision in this case. Throughout their closing  
17 arguments, all of the lawyers, here and there,  
18 instructed you on the law. Once they did that, they  
19 were out of their province. I am the exclusive judge  
20 of the law. I permitted them to tell you something  
21 about the law because in this kind of a case it is almost  
22 impossible to discuss the evidence without relating it  
23 to the legal issues involved.

24 But you must bear in mind that if what  
25 they said about the law differs from what I say about



1 it, you must reflect what they said and apply the law  
2 as I give it to you.

3 Now, just as I am the exclusive judge of  
4 the law, you and you alone are the exclusive judges of  
5 the facts. You and you alone decide what witnesses  
6 you will believe, and you and you alone decide how much  
7 of a witness's testimony you will believe and how much  
8 of it you may wish to reject. You and you alone decide  
9 what weight, that value, that conclusions, that  
10 inferences you draw from the evidence and, of course,  
11 ultimately you decide the guilt or innocence of each  
12 defendant on each count in this indictment.

13 Now, you are not to conclude from any  
14 rulings that I have made throughout this trial, or any  
15 conclusion that I say here or not, that I have any  
16 opinion one way or the other as to whether any  
17 defendant is guilty or not guilty of any of the charges  
18 made against him in this indictment. That decision, as  
19 I have told you earlier, is exclusively up to you.

20 Now, how do you go about finding the  
21 facts? Finding the facts is merely a process by which  
22 you, the jury, consider the exhibits which have been  
23 received in evidence. Consider the testimony of all  
24 of the witnesses, both on direct and on cross-examina-  
25 tion. Sift out what you believe, weigh it in the scale

1 of your reasoning powers and common sense, and draw  
2 such conclusions as your good, everyday common sense  
3 tells you that the evidence supports and justifies  
4 and decide just where the truth lies in this case.

5 Now, in this connection all evidence is  
6 of two general types: direct evidence and circumstantial  
7 evidence. Evidence is direct when the facts are shown  
8 by exhibits which are admitted into evidence, or when  
9 sworn to by witnesses who have actual knowledge of  
10 them from something that they have learned through the  
11 exercise of one of their five fundamental senses, such  
12 as sight, hearing, taste, smell and touch.

13 Circumstantial evidence simply means the  
14 drawing of a logical conclusion from other facts that  
15 are shown by direct evidence.

16 The classical example of circumstantial  
17 evidence is in Daniel Defoe's story about Robinson  
18 Crusoe. When Crusoe saw the footprint on the sand and  
19 knew that it was not his own, the only logical con-  
20 clusion to draw was that another human being was on  
21 the island.

22 Now, not all circumstantial evidence  
23 calls for such a compelling and absolutely certain  
24 conclusion. But I am sure that you are all familiar  
25 with the process. We use it in our daily lives. We



1 draw conclusions based on our common sense and ex-  
2 perience from other connected facts and the process is  
3 no different here.

4 Now, it is your memory of the evidence  
5 that controls here. It is not the way I remember it  
6 and it is not the way counsel remembers it and I have  
7 no intention here of revising this evidence. I know  
8 that it is fresh in your mind. If your memories of  
9 the evidence squares with what the lawyers told you  
10 yesterday, as their memory of it, you may accept what  
11 they said. But if you have a different recollection  
12 of the evidence you are bound by your oath to reject  
13 what they said, and rely on your own memory.

14 Now, when I say your own memory, I mean  
15 your collective memory. One of you can help another  
16 to stimulate his memory; to help refresh his  
17 recollection. Sometimes jurors are only out a few  
18 minutes, and following the script that they see on TV  
19 every night, some juror sends a note and says he wants  
20 to have the testimony of witness A or witness B, or  
21 sometimes four or five witnesses reread.

22 Now, in that connection, there is no  
23 transcript of this testimony at all. It all rests in  
24 those stenotype notes which you see Mr. Sheffer taking  
25 there, and it takes time to find it. We can do it if

1 it is necessary, and if any of you strongly feels and  
2 sends a note through your foreman that you want some  
3 testimony reread, we can do it. But it takes time,  
4 and before you resort to that process, please try to  
5 help stimulate and refresh each other's memory. It  
6 is your collective memory of the evidence that controls.

7 Now, William L. Holmes, a Special Agent  
8 of the FBI, was allowed to testify as an expert on  
9 the bookmaking or gambling business. An expert may  
10 testify and give his opinion on a subject concerning  
11 which he has some special knowledge. This is allowed  
12 on the theory that the advice of one experienced and  
13 versed in a technical or a special subject will help  
14 the jury in reaching its decision. You may consider  
15 the expert's qualifications and opinion, and weigh  
16 his reason, if any, and give his testimony such weight  
17 as you feel it deserves. An expert opinion is purely  
18 advisory and you may reject it entirely if in your  
19 judgment the reasons given are not convincing. That  
20 determination rests with you.

21 Now, one of your most important functions  
22 is to decide which witnesses you will believe, and this  
23 is so as to every witness, whether called by the  
24 government, whether a government agent or whether a  
25 witness called by the defense.



1                   You are not to be influenced by the  
2                   number of witnesses called, or by the length of the  
3                   trial. You are concerned not with the quantity of the  
4                   evidence, but with the quality of the evidence. The  
5                   first test which you should apply in determining the  
6                   truthfulness of a witness is to measure what he  
7                   says against your plain, everyday, common sense. You  
8                   are not bound to believe unreasonable statements, or  
9                   to accept testimony that defies your common sense or  
10                  frustrates your intelligence, just because the statements  
11                  are made under oath in a public courtroom.

12                 You was the witness in this case. In  
13                 deciding whether to believe a witness you should  
14                 consider his conduct and his manner on the stand. I  
15                 saw you watching these witnesses with particular care  
16                 as they were testifying. Obviously, you were sizing  
17                 them up. How did the witness impress you? Was the  
18                 witness being frank with you? Was his version of the  
19                 evidence straightforward? Was he trying to conceal or  
20                 hold back some testimony? Was he just parroting  
21                 answers? Does he have any motive to testify falsely?  
22                 Is he interested in any way in the outcome of this  
23                 case? How strong or weak was his memory of important  
24                 events? Did he forget the unforgettable?

25                 In short, can you rely on him?

1 Can you trust him? Was he hostile or friendly toward  
2 either side in this case?

3 You ought to consider his opportunity to  
4 know the facts about which he testified and the  
5 probability or improbability of what he said in light  
6 of the totality of the circumstances here. How does  
7 his testimony add up when considered with all of the  
8 other evidence? How far does his story check out with  
9 the recollections and with documentary evidence? Are  
10 there any inconsistencies in his testimony and, if so,  
11 how important are they?

12 Now, if you find that any witness has  
13 deliberately and willfully lied with respect to any  
14 material fact in his testimony offered at this trial,  
15 you may believe either one of two things: You may  
16 suspect as much of the witness' testimony as you  
17 believe, or you may reject, if you wish, his entire  
18 testimony.

19 Now, none of the defendants took the  
20 stand and testified in this case. A defendant is not  
21 required to take the stand and testify in his own  
22 behalf. He has no burden of proof whatever to sustain  
23 in this case. Each defendant has denied the charges  
24 made against him by his plea of not guilty, and he is  
25 presumed to be innocent. The fact that he has not



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testified cannot be taken into consideration by you in any manner. You may not permit that fact to weigh in the slightest degree against the defendant, nor should that fact ever enter into your discussions or your deliberations in any way.

Now, before discussing the crime charge, I want to remind you that an indictment is a mere accusation. It is not evidence of the truth of the charge and you are to draw no inference of guilt from the mere fact that the defendant has been indicted. An indictment simply means that the defendant has been accused of a crime and, as I told you earlier, that defendant here has denied the charge, made explicit his plea of not guilty, and he has no burden or duty to attempt to sustain in this case. He is under no obligation to produce any witnesses. He is presumed to be innocent, and this presumption of innocence continues throughout the trial and during the deliberations of the jury. This presumption of innocence is overcome when and only when the government establishes the guilt of a defendant beyond a reasonable doubt.

Now, what do I mean by beyond a reasonable doubt? As the phrase implies, a reasonable doubt is a doubt that is based upon reason, a reason

1 which appears in the evidence or in the lack of  
2 evidence. It is not some vague, speculative, imaginary,  
3 conceivable doubt, nor a doubt based upon emotion,  
4 sympathy, or prejudice, or upon what some juror might  
5 regard as an unpleasant duty.

6 The government is not required to prove  
7 a defendant guilty beyond every conceivable or possible  
8 doubt, nor to an absolute or mathematical certainty,  
9 because such measure of proof is usually impossible in  
10 human affairs.

11 You should review all of the evidence as  
12 you remember it. Sort out what you believe. Discuss  
13 it, analyze it; weigh and compare your view of the  
14 evidence with your fellow jurors. If that process  
15 produces a notion, belief or conviction in your mind  
16 such as you would be willing to act upon without  
17 hesitation if this were a matter of importance to your-  
18 self, then you may say that you have been convinced  
19 beyond a reasonable doubt.

20 On the other hand, if, after going  
21 through that process, your mind is wavering or is so  
22 uncertain that you would hesitate before acting if  
23 this were an important matter of your own, then you  
24 have not been convinced beyond a reasonable doubt, and  
25 your verdict must be not guilty.



Now, the indictment in this case contains five counts. Each of those counts charges a separate offense or crime, and each count must be considered and decided by you separately.

The indictment names six defendants, all of whom are on trial before you. They are Samuel L. Abaro, also known as "Sammy;" Joseph D'Apostino, also known as "Joey;" Louis Michael Dorso, also known as "Mickey;" Charles L. Dorso, also known as "Charley;" Louis J. Gervino and Raymond Gambino, also known as "Randy."

Now, the guilt or non-guilt of each defendant must be determined by you separately as to each count in order to be found in this indictment. Although, as I will explain to you shortly, in considering a defendant's guilt or non-guilt, you may have to determine the nature of the conspiracy, if any, of other persons, and this is particularly true when I come to discuss Count 1, and when to discuss Count 1.

Now, in the determination of guilt or non-guilt, you must keep in mind that guilt is personal. There is no such thing under our system of justice as guilt by mere association. The guilt or non-guilt of the defendant on each count before you must be determined

1 separately with respect to him, solely on the basis of  
2 the evidence presented against him or on the lack of  
3 evidence. Let us turn to the specific charges now  
4 against these defendants, and we will first discuss  
5 Count II, because all of the remaining counts are  
6 based on the legal principles and concepts which apply  
7 to Count II.

8 Count II of the indictment charges each  
9 of the defendants on trial with violating a law of the  
10 United States, which makes it a crime for anyone to  
11 conduct, finance, manage, supervise, direct or own all  
12 or part of an illegal gambling business.

13 In order to convict the defendant whom  
14 you are considering on Count II, the government must  
15 prove the following three facts beyond a reasonable  
16 doubt:

17 First, that the gambling business must  
18 be in violation of the law of the State of New York.

19 Secondly, that it must have five or more  
20 persons involved in its conduct, and third, it must be  
21 in substantially continuous operation for more than 30  
22 days, or have a gross revenue of \$2,000 or more in a  
23 single day.

24 Now, the first fact which the government  
25 must prove beyond a reasonable doubt is that the



1 business which was being operated was an illegal  
2 gambling business. The term "an illegal gambling  
3 business" means a business which is a violation of the  
4 law of the State of New York, since there is no  
5 dispute here that the sports bookmaking operation and  
6 on-day business described occurred in the Northern  
7 District of New York and elsewhere.

8 Now, the New York law provides that a  
9 person is guilty of promoting gambling in the second  
10 degree when he knowingly advances or profits from  
11 unlawful gambling activity. You will note that I have  
12 said that a defendant must knowingly advance or profit  
13 from illegal gambling activity. The indictment  
14 charges that the defendant acted unlawfully and  
15 knowingly. Obviously, I do not then ask a defendant  
16 what he knew that his conduct is criminal or that it  
17 violated either State or Federal law. It is only when  
18 that he must have known that he was acting, that he was  
19 acting voluntarily, deliberately and on purpose, and  
20 not because of mistake, accident, carelessness or  
21 other innocent reason.

22 Deliberately or illegally simply means  
23 that the act which the defendant is doing is prohibited  
24 by law.

25 Now, a person advances gambling activity

1           tion, acting other than a player, he engages in conduct  
2           which materially aids any form of gambling activity.

3           A person profits from gambling activity  
4           when, other than as a player, he accepts or receives  
5           money or other property pursuant to an agreement or  
6           understanding with any person, whereby he participates  
7           or is to participate in the proceeds of gambling  
8           activity.

9           Now, a player means a person who engages  
10          in any form of gambling solely as a contestant, or  
11          better, without receiving or becoming entitled to  
12          receive any profit therefrom, other than personal  
13          gambling winnings, and without otherwise rendering any  
14          material assistance to the establishment, conduct or  
15          operation of the particular gambling activity.

16          Thus a person who gambled at a social  
17          game of chance on equal terms with the other  
18          participants does not constitute reader material  
19          assistance to the establishment, conduct or operation  
20          thereof by performing without fee or remuneration,  
21          acts directed toward the arrangement or the facilitation  
22          of the game, such as inviting persons to play,  
23          permitting the use of the premises and supplying cards  
24          or other equipment used therein.  
25

A person who engages in bookmaking is



1 not a player. Bookmaking means advancing gambling  
2 activity by intentionally accepting bets from members of  
3 the public as a business rather than in a casual or  
4 personal fashion upon the outcome of future contingent  
5 events.

6 Bookmaking, the most business, as used in these  
7 laws, is to be given the ordinary social meaning. In  
8 a sports bookmaking, gambling and betting business,  
9 which accepts bets from members of the public, is an  
10 illegal gambling business prohibited by New York law.

11 Now, the New York law, however, that you  
12 may find that one or more of the defendants was  
13 operating an illegal gambling business in violation of  
14 New York law is not enough to find any defendant  
15 guilty. Before you can convict any defendant of  
16 violating the federal law applicable here, you must  
17 find two other facts. One of these, the second fact  
18 which the government must prove beyond a reasonable  
19 doubt, is that the illegal gambling business involved  
20 five or more persons who conducted, financed, managed,  
21 supervised, directed or owned all or part of such  
22 business.  
23

24 The word "conduct" means to carry on or  
25 to operate, or to cause to function, and refers both  
to high level persons and to street-level employees.

2 It includes all levels of personnel who participate in  
3 an illegal gambling business regardless of how minor  
4 their roles, and whether or not they are called writers,  
5 collectors, runners, clerks, or employees. It includes  
6 agents or individuals who accept bets from others, and  
7 pass them along to a single, central gambling business.  
8 It includes activities of such bookmakers who accept  
9 bets from their own customers, and lay them off to a  
10 single central operator, on a regular, ongoing,  
11 consistent and substantial basis.

12 It does not include anyone, including an  
13 outside or independent bookmaker who places a single,  
14 or isolated bet for his own customer, or who makes  
15 isolated and casual, rather than substantial and  
16 regular lay-off bets, or who occasionally exchanges  
17 line information with the central gambling operation.

18 In short, a syndicate includes all  
19 persons who participate in the operation of a  
20 gambling business, including those who participate in  
21 a network composed of other bookmakers, who join in a  
22 cooperative and consistent ongoing relationship with  
23 a single central gambling enterprise, and pool their  
24 bets, either through fairly regular layoffs, or  
25 profit sharing, or consistently and continuously share  
line information, or occasionally transfer a



1 substantial amount of business, or part of the action,  
2 or give advice concerning gambling operations.

3 However, the bettor, player or customer  
4 of an illegal gambling business does not conduct the  
5 illegal gambling business, even though he engages in  
6 the illegal gambling activity by placing a bet or bets,  
7 and even though he may be a regular and even a daily  
8 customer of the gambling business, and notwithstanding  
9 the fact that he may play or bet large amounts of  
10 money.

11 The Federal law is not aimed at the  
12 bettor, at the player or the customer, but at those  
13 who conduct the illegal gambling business.

14 Now, "to finance" means to supply the  
15 capital or the financial backing or money to establish  
16 or operate or run the business. "Manage" means to run  
17 the business, to have charge of, to direct or to have  
18 an important voice in the direction and policies of  
19 the business. "Supervise" means to oversee or boss  
20 the operation. "Direct" means to guide or control or  
21 run. "Own" means to have ownership or title in some  
22 demonstrable way, such as a share in the profits of  
23 the business.  
24

25 Now, you will notice that in stating the  
acts, such as conduct, supervise, finance, and so forth.

1 which are prohibited by the statute, I have used the  
2 word "or" he must conduct, "or" supervise, "or" finance,  
3 and so on. It is not necessary, therefore, for the  
4 government to prove that the defendant then you are  
5 considering did all of these prohibited acts. It is,  
6 in itself, enough if you find that he knowingly did  
7 any one of them. And it is necessary for the govern-  
8 ment to prove that five or more persons did all of the  
9 prohibited acts.

10 For example, it would be sufficient if  
11 the government proved, beyond a reasonable doubt, that  
12 three persons conducted the gambling business, and that  
13 two others financed it; that would give you the  
14 requisite five.

15 The government contends that all of the  
16 defendants now on trial, that James J. Collins and  
17 John Cook, two of a group of eight persons which  
18 conducted or financed, managed, or supervised, or  
19 directed, or owned, all or part of the gambling  
20 business. And it is for you to decide whether that is  
21 the fact.

22 The third fact which the government must  
23 prove beyond a reasonable doubt is that the illegal  
24 gambling business was a gambling business which had  
25 been or remained in substantially continuous operation



1 for a period in excess of 30 days, or that it received  
2 profits of more than \$2,000 in any single day.

3 Now, the government contends that the  
4 evidence shows that the sports bookmaking operation  
5 and parlay business involved here was in substantially  
6 continuous operation from about September 1, 1943  
7 through June 30, 1945. Substantially continuous  
8 operation for more than 30 days does not mean that the  
9 business must operate every single day for at least  
10 31 consecutive days, or that it must necessarily  
11 operate in the same physical location. Rather it means  
12 that the same illegal gambling business must operate  
13 on a regular basis, even at many different locations,  
14 for a period in excess of 30 days.

15 Now, you must consider all of the  
16 evidence and then determine accordingly. If, as to the  
17 defendant whom you are considering, you find that the  
18 government has failed to prove beyond a reasonable  
19 doubt each of the three facts which I have instructed  
20 you the government is required to prove, then you  
21 must find that defendant not guilty on Count II.

22 On the other hand if, as to the  
23 defendant whom you are considering, you find that the  
24 government has proved beyond a reasonable doubt all  
25 three of the facts which I have instructed you the

1 government is required to prove, then you should  
2 convict that defendant on Count II.

3 We will now turn to Counts III, IV and V.

4 The law involved in these counts makes  
5 it a crime for any person to use any facility, such as  
6 a telephone in interstate commerce, with the intent to  
7 promote, manage, establish, carry on or facilitate  
8 the promotion, management, establishment or carrying  
9 on of any business enterprise involving gambling which  
10 operates in violation of state or federal law and,  
11 thereafter to perform or attempt to perform any act of  
12 promoting, managing, establishing, carrying on or  
13 facilitating the promotion, management, establishment  
14 or carrying on of the gambling enterprise.

15 Each of Counts III through V charges  
16 that the defendant D'Agostino and Camerano violated  
17 this law by using telephone facilities between the  
18 State of Nevada and the State of New York, to  
19 disseminate sports line information for a gambling  
20 enterprise which was operating in violation of state  
21 and federal law. These counts also charge that the  
22 defendant Grezo aided and abetted D'Agostino in  
23 committing the crime.

24 Specifically, Count III alleges such a  
25 telephone call between D'Agostino and Camerano on or



1 about January 4, 1935 at approximately 12:20 p.m.

2 Count 17 alleges such a telephone call  
3 between these two defendants on or about January 4, 1935  
4 at approximately 3 p.m.

5 And Count 18 alleges such a telephone  
6 call between these two defendants on or about  
7 January 5 at approximately 12:30 p.m.

8 Now, with respect to Count III through  
9 7, you again must consider each count, and each  
10 defendant named in that count separately. We will  
11 first consider DiPonzio and Camerano.

12 In order to convict either or both of  
13 them on this count which you are considering, the  
14 government must prove the following three facts beyond  
15 a reasonable doubt:

16 First, that the defendant used a tele-  
17 phone facility to talk to someone in another state  
18 with the intent to promote or to facilitate the  
19 promotion, management, establishment or carrying on  
20 of a business enterprise involving gambling.

21 Now, here it is not necessary for the  
22 government to prove that the defendant had knowledge  
23 that the telephone call was from out of state or that  
24 he knew that by making or accepting, the call he was  
25 violating the law.

1                    however, with respect to the defendant's  
2                    intent, it is necessary for the government to prove  
3                    that the interstate facility, here, an interstate  
4                    telephone facility, was in fact used and that the  
5                    defendant used it, or caused it to be used, and that  
6                    he intended to promote, or to facilitate the promotion,  
7                    management, establishment or carrying on of the illegal  
8                    gambling activity.

9                    You will notice again that I used the  
10                    word "or", in listing the prohibited acts and the  
11                    prohibited intent. The government need, therefore,  
12                    only prove that the defendant's intent was to do any  
13                    of the things that I have listed.

14                    Now, the government contends that the  
15                    purpose of the interstate telephone calls between  
16                    Nevada and New York was to disseminate line information.  
17                    It is sufficient, if you find that the defendant  
18                    intended the purpose of the line information was to  
19                    facilitate or in any way help or further the gambling  
20                    activity. It is not necessary that the government  
21                    prove that the line information was absolutely  
22                    essential to the operation of the gambling activity.

23                    The second fact which the government must  
24                    prove beyond a reasonable doubt as to each of Counts  
25                    III through V is that the gambling enterprise was in



1 violation of either federal law or state law. Here,  
2 you will recall and apply my earlier instructions on  
3 those subjects in discussing, Count II, that is, that  
4 in the State of New York a person is guilty of  
5 promoting, gambling in its advance or profits from  
6 gambling activity, and thus advancing gambling activity  
7 consciously is any kind of conduct in any phase of the  
8 gambling operation, no matter how small or low level,  
9 except that of a bettor or player.

10 Discontinuing or receiving line information  
11 for a gambling business is advancing gambling activity  
12 under this law.

13 You will also recall my earlier  
14 instructions as to what kind of gambling enterprise is  
15 in violation of the law of the United States, and if  
16 you find in Count III that such an illegal gambling  
17 business existed, then that finding alone will satisfy  
18 the second part with respect to Counts III through V.

19 The third fact which the government must  
20 prove beyond a reasonable doubt as to each of Counts  
21 III through V is that after the alleged interstate  
22 telephone conversation, the defendant knowingly  
23 performed or attempted to perform any act of promoting  
24 or of facilitating the promotion, management, es-  
25 tablishment or carrying on of a business enterprise

1 involving gambling. Here, again, you will notice that  
2 I have used the word "gambling". The government need only  
3 prove any single prohibited act in furtherance of the  
4 gambling enterprise in order to satisfy this third  
5 fact.

6 Now, in discussing counts III through V,  
7 we have been referring only to the defendants  
8 DiGostino and Cassano who are alleged to be the  
9 actual participants in each of the three interstate  
10 telephone calls. Under the law, DiGostino and  
11 Cassano are called "principals" in the criminal  
12 offense.

13 We will now discuss the defendant Greco,  
14 who is named as an aider and abettor in each of  
15 counts III through V.

16 The government contends that Greco aided  
17 and abetted in the offense charged in each of counts  
18 III through V, by discussing line numbers with  
19 DiGostino and by using the line information provided  
20 to him by Cassano, through DiGostino. The  
21 government does not have to prove that Greco was a  
22 participant in any interstate telephone call, or that  
23 Greco had knowledge that an interstate facility was  
24 being used.  
25

This defendant Greco contends that he was



1                   sively considering their intervention in order to play the  
2                   strategy and that he was a good player. That issue is  
3                   for you to decide.

4                   On the other hand, there is a question as to  
5                   whether or not the defendant, in order to preserve the  
6                   credibility of his own testimony as to the quality of  
7                   the evidence, should have been allowed to testify.

8                   The defendant, however, did not do that. He  
9                   did not testify that he was in the room with  
10                  the defendant. He did not testify that he was  
11                  in the room with the defendant. He did not testify  
12                  that he was in the room with the defendant. He did not  
13                  testify that he was in the room with the defendant. He did not  
14                  testify that he was in the room with the defendant. He did not  
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                  testify that he was in the room with the defendant. He did not

1 state in its support, rather than a mere witness, player,  
2 spectator or bystander on the scene of a crime when it  
3 was controlled by a single individual.

4 This comes to each of Counts III  
5 through V, you must consider all of the evidence and  
6 each count and each element separately. As to the  
7 elements of each count and each crime, if you find as to  
8 the elements and you are considering that the  
9 government has failed to prove beyond a reasonable  
10 doubt each of these facts which I have instructed you  
11 it is required to prove, then you must acquit that  
12 defendant on that count.

13 In the count three, as to the defendants  
14 O'Foy and Williams, I have said that the govern-  
15 ment has failed to prove as the elements count all three  
16 of the facts which I have instructed you it is  
17 required to prove, then you may convict that defendant  
18 on that count.

19 As to the defendant Croso, if you find  
20 that the government has failed to prove beyond a  
21 reasonable doubt each of the three facts which I have  
22 instructed you it is required to prove as to the  
23 defendant O'Foy and Williams on the count which you are  
24 considering, or that the government has failed to prove  
25 that Croso knowingly aided and abetted another,



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1 D'Agostino, in the commission of the crime, then you  
2 must find Greco not guilty on that count.

3 On the other hand, as to the defendant  
4 Greco, if you find that the government has proved  
5 beyond a reasonable doubt all three of the facts stated  
6 it is required to prove as to the defendant D'Agostino  
7 on the count which you are considering, and that the  
8 government has proved that Greco knowingly aided and  
9 abetted D'Agostino in the commission of the crime, then  
10 you may convict the defendant Greco on that count.

11 We will now turn to the first count of  
12 the indictment which charges a conspiracy.

13 Count 1 charges the six defendants now  
14 on trial, together and with each other and with  
15 V. Coliccia and Leon Cook, who are named as co-defendants,  
16 and with numerous other persons whose names and  
17 identity are to the Grand Jury unknown, with conspiracy  
18 to conduct, finance, manage, supervise and carry on  
19 part of an illegal gambling business.

20 Here, again, you must consider each  
21 defendant separately. In order to convict the  
22 defendant whom you are considering on Count 1, the  
23 government must prove the following three things beyond  
24 a reasonable doubt:

25 First, the existence of a conspiracy.

1 charged in the indictment, sometime between September  
2 1, 1973 and June 26, 1976, in the Northern District of  
3 New York, for the purpose of committing the crime of  
4 conducting, assisting, managing, supervising, directing,  
5 or owning all or part of an illegal gambling business  
6 as I have defined that crime in my discussion of  
7 Count II. Specifically, the government must prove  
8 the existence of a conspiracy which contemplated the  
9 crime of conducting an illegal gambling business which  
10 was prohibited by the law of New York, which involved  
11 at least five persons or more persons, and which was  
12 intended to continue in operation for more than 30  
13 days, or to have a gross revenue of at least \$2,000  
14 in any single day.

15 Therefore, that the defendant whom you are  
16 considering join in the conspiracy with knowledge of its  
17 illegal purpose.

18 Third, that any member of the conspiracy  
19 committed at least one of the overt acts set forth in  
20 the indictment. I will now discuss what these facts  
21 mean.

22 The first fact which the government must  
23 prove beyond a reasonable doubt is the existence of  
24 the conspiracy. Now, what is a conspiracy? A  
25 conspiracy, for our purpose, is simply a combination





1 New York law involving five or more people and  
2 intended to continue for more than 30 days, or to have  
3 a gross revenue of at least \$2,000 in any single day.

4 Now, in determining whether there was  
5 such a combination, understanding or agreement here,  
6 you should consider all of the evidence about each  
7 defendant's conduct, acts and statements. You should  
8 consider not only what was said or done, but also how  
9 it was said or done. From the point of view of the  
10 law, there is danger to the public when two or more  
11 people combine to do something that is unlawful. The  
12 danger is greater than if the lone criminal acts by  
13 himself because in numbers there is strength, and two  
14 or more people are able to accomplish crimes that are  
15 more difficult and more harmful to the public.

16 Because of this, a conspiracy to commit  
17 a crime is a distinct crime, in and of itself, separate  
18 and apart from the crime which it is the object of the  
19 conspiracy to accomplish. In other words, the agree-  
20 ment to enter into this illegal gambling business, in  
21 and of itself, is a crime, whether or not the  
22 defendants ever actually carried out their plan,  
23 whether or not they ever, in fact, entered into an  
24 illegal gambling business. Thus you may find that a  
25 conspiracy existed, even though the purpose of the



conservation of energy is satisfied.

1 business in our discussion of Count II, and he must  
2 voluntarily and knowingly join in the plan with an  
3 intent to combine with others to violate the law, and  
4 he must knowingly promote the scheme, or have some kind  
5 of a stake in its success.

6 In this connection, you will recall my  
7 earlier instructions as to what constitutes knowledge,  
8 willful and intentional crime in discussing Count II,  
9 and apply those instructions here.

10 Here, in determining the knowledge and  
11 intent of a defendant, it is obviously impossible to  
12 look into his mind. However, intent and knowledge may  
13 be inferred from the way a defendant acts, by his  
14 statements, and by all the surrounding circumstances.  
15 Thus, the old adage "actions speak louder than words"  
16 applies here.

17 In this connection, you may not rely upon  
18 statements of one defendant to find that another  
19 defendant was a member of the conspiracy. You must  
20 determine the membership of a particular defendant  
21 solely from the evidence concerning his own actions,  
22 his own conduct, his own statements.

23 The mere fact that a defendant may  
24 witness a crime, or be present when a crime is committed  
25 by others, or that he may attend a meeting or unwittingly



1 assist the criminal venture, or have an association or  
2 friendship with a member of a conspiracy, or even  
3 though he participates in an isolated gambling  
4 transaction with a member of a conspiracy is not, in  
5 itself, enough to make him a conspirator unless you  
6 first find, beyond a reasonable doubt, that he knew of  
7 the conspiracy and that he deliberately and inten-  
8 tionally joined in the criminal venture with knowledge  
9 of its unlawful purpose and with a stake in its success.

10 Now, one may become a member of a  
11 conspiracy without knowledge of all of the details, or  
12 all of the operations of the conspiracy. One defendant  
13 may know only one other member of the conspiracy. Yet  
14 if he knowingly conspires to further the illegal  
15 purpose of the conspiracy, with knowledge that others  
16 have joined together to violate the law, he becomes a  
17 member, although his role may be only an insignificant  
18 or minor one.

19 Now, if you find that a defendant did  
20 join the conspiracy with knowledge of its illegal  
21 purpose, then he is guilty of what others say and do in  
22 furtherance of the objects of the conspiracy, even  
23 though he is not present, provided he is still a  
24 member. You will remember that each conspirator is the  
25 agent or partner of every other conspirator.

1                   What one does to promote the illegal  
2 plan or illegal agreement binds every other member of  
3 the conspiracy.

4                   Now, the third fact which the government  
5 must prove beyond a reasonable doubt is the commission  
6 by any conspirator of at least one overt act in  
7 furtherance of the objects of the conspiracy. An  
8 overt act means any act by any member of the conspiracy  
9 in an effort to accomplish some purpose of the con-  
10 spiracy.

11                   The reason the law of conspiracy requires  
12 an overt act is because a person might agree to commit  
13 a crime and then change his mind. Therefore, before a  
14 defendant can be convicted of a conspiracy, one or  
15 more of the conspirators must have taken at least one  
16 step, or performed at least one single act, toward  
17 carrying out the unlawful intent to commit the crime.  
18 That person may, in itself, be perfectly innocent.

19                   The indictment in this case enumerates  
20 seven overt acts allegedly done in furtherance of the  
21 conspiracy in order to effect the objects of the  
22 conspiracy, and they are:

23                   One, that on or about October 30, 1974,  
24 Samuel Abare and James A. Colloca met in the Chartroom,  
25 in Jamaica, New York, and had a discussion concerning a



1 debt.

2 Two, on or about November 5, 1974,  
3 Joseph T. D'Agostino spent approximately one and a  
4 half hours at the residence of Leon Cook at 214 Golf  
5 Road, Syracuse, New York, conducting the aforesaid  
6 illegal gambling business over Cook's telephone.

7 Three, on or about December 21, 1974,  
8 Joseph T. D'Agostino had a telephone conversation with  
9 Charles T. Grazo about matters relating to the operation  
10 of the aforesaid illegal gambling business in which  
11 D'Agostino accepted lay-off wagers from Grazo.

12 Four, on or about January 3, 1975,  
13 Joseph F. D'Agostino distributed line or odds  
14 information over the telephone to Raymond Czerwinski,  
15 and they discussed other matters relating to the  
16 operation of the aforesaid illegal gambling business.

17 Five, on or about January 4, 1975,  
18 Richard Michael Beach and Joseph T. D'Agostino had a  
19 telephone conversation in which they discussed the  
20 status of the aforesaid illegal gambling business  
21 concerning a particular game, and during which  
22 D'Agostino gave Beach the line, or odds information on  
23 numerous sporting events.  
24

25 Six, on or about January 5, 1975, Louis  
M. Camerata telephoned Joseph F. D'Agostino from

Las Vegas, and Cameron gave D'Agostino line or odds information on numerous sporting events for use in the aforesaid illegal gambling business.

Seven, on or about January 6, 1975, Joseph T. D'Agostino and Samuel Ebare had a telephone conversation in which Samuel E. Ebare gave Joseph T. D'Agostino instructions with respect to the pay-off of a winning bettor in the aforesaid illegal gambling business, and they arranged a meeting.

Now, the government contends that the meetings and telephone calls referred to in these overt acts have been proved beyond a reasonable doubt from the tape recordings, and from physical surveillance by FBI agents. That, of course, is for you to decide.

You will note that the overt acts charged are innocent, in and of themselves. Nevertheless, if an overt act was performed by any member of the conspiracy during the existence of the conspiracy, and in furtherance of its unlawful purpose, then that act was sufficient to satisfy the government's burden of proving the third fact.

The government must prove to you beyond a reasonable doubt that at least one of the overt acts which I have just read to you was committed by one or more of the conspirators and that that act was done in



furtherance of the conspiracy.

Now, in this connection, the government does not have to prove that all of the defendants committed an overt act, or that all of the overt acts were committed. It is required to prove one overt act by any one member of the conspiracy.

Similarly, it is sufficient if the dates alleged in the overt acts are substantially similar within a few weeks of the dates mentioned in the testimony. The same is true as to the place mentioned in the overt acts. It must be substantially similar. There is no requirement that it be exactly as alleged in the indictment.

With respect to Count I, therefore, you must consider all of the evidence and each defendant separately. If, as to the defendant whom you are considering, you find that the government has failed to prove beyond a reasonable doubt each of the three facts which I have instructed you it is required to prove, then you must acquit that defendant on Count I.

On the other hand, if as to the defendant whom you are considering, you find that the government has proved beyond a reasonable doubt all three of the facts which I have instructed you it is required to prove, then you should convict that defendant on Count

1 I.

2 You are instructed that the question of  
3 possible punishment of a defendant in the event of a  
4 conviction is no concern of yours, and it should not  
5 enter into or influence your deliberations in any way.  
6 The duty of imposing sentence, in the event of a  
7 conviction, rests exclusively upon the Court. The  
8 function of the jury is to weigh the evidence in the  
9 case, and determine the guilt or non-guilt of the  
10 defendant solely upon the basis of that evidence.

11 When you retire to the jury room, you  
12 should elect one of your number to serve as your  
13 foreman or forelady, and to address whatever  
14 communications, or to announce your verdict to the  
15 Court.

16 Treat one another with consideration and  
17 respect, as I know that you will. If differences of  
18 opinion arise, your discussions should be dignified,  
19 calm and intelligent. Your verdict must be based on  
20 the evidence and the law, the evidence which was  
21 presented in this case, as you collectively remember  
22 it, and the law as I have given it to you in this  
23 charge.

24 You are each entitled to your own  
25 opinion. No juror should acquiesce in a verdict



1 against his individual judgment. Nevertheless, I  
2 would point out that no one should enter the jury room  
3 with such pride of opinion that he would refuse to  
4 change his or her mind, no matter how convincing or  
5 how persuasive, or how intelligent the argument of  
6 another juror or jurors.

7 Discussion and deliberation lie at the  
8 very heart of our judicial jury process, and your  
9 deliberations should be approached in that spirit.  
10 Talk out your differences. Each of you should, in  
11 effect, decide the case for himself or herself, after  
12 thoroughly reviewing the evidence, and frankly  
13 discussing it with your fellow jurors, with an open  
14 mind, and with a desire to reach a verdict. If you do  
15 that, you will be acting in the true democratic process  
16 of the American jury system.

17 There are 12 of you on this jury. The  
18 alternate jurors will be excused before you retire for  
19 your deliberations. Any verdict must be the unanimous  
20 verdict of all of you as to each defendant and each  
21 count in which that defendant is named, and it must  
22 represent the honest conclusion of each of you.

23 I submit the case to you with every  
24 confidence that you will fully measure up to the oath  
25 which you took as members of the jury to decide the

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issues submitted to you fairly and impartially, and without fear or favor.

And to guide you in your deliberations, I will send in a copy of the indictment.

Now, I submit the case to you with every confidence that you will fully measure up to your oath.

Now, members of the jury, if you find that the government has failed to establish the guilt of any defendant beyond a reasonable doubt, you should find that defendant not guilty.

If you find that a defendant has not violated the law, you should not hesitate, for any reason, to render a verdict of not guilty as to him.

On the other hand, if you find that the government has established the guilt of a defendant beyond a reasonable doubt, you should not hesitate, because of sympathy, or any other reason, to render a verdict of guilty.

Your foreman or forelady then will return a verdict, an oral verdict in open court of either guilty or acquittal as to each defendant on each count in which that defendant is named.

Are there any exceptions, gentlemen? If so, I will hear you at the bench.

If, Your Honor, could we



approach the bench for a moment, please:

(Thereupon the following took place at the side bar, out of the hearing of the jury.)

THE WITNESS: Your Honor, I do not have any exceptions but on Count II, when the count was explained as to the 30 days or \$2,000, you hesitated there, and you said "there's profit," and you said, "\$2,000 profit" and I would ask the Court to clarify that as to revenue and it should be \$2,000 gross revenue.

THE COURT: Thank you.

(Thereupon the following took place before the Court and the jury.)

THE COURT: In discussing Count II I said that the government must prove that the business was in continuous operation for more than 30 days, and then I said, "it had a profit of \$2,000." I am in error. It is a gross revenues of \$2,000, in any single day.

(The Court then turned to the marshals.)

(Thereupon the marshals were sworn by the Clerk.)

THE COURT: The alternate jurors are now excused from further consideration of this case.

(The Court then said to the jury, "The jury will now retire.")

